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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/248,595 02/11/99 FEENEY B P-5761-SPALD

EXAMINER

QM12/0901

DIANE F COVELLO
SPALDING SPORTS WORLDWIDE
425 MEADOW STREET
P O BOX 901
CHICOPEE MA 01021-0901

ARYANPOUR, M

ART UNIT

PAPER NUMBER

3711

DATE MAILED:

09/01/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/248,595

Applicant(s)
Brian P. Feeney et al

Examiner
Mitra Aryanpour

Group Art Unit
3711

☒ Responsive to communication(s) filed on Nov 2, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-10 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-10 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "Rain Test" must be shown for 120 minutes not just for 90 minutes or the feature(s) canceled from the claim(s). No new matter should be entered.

Specification

2. The following is a quotation of 37 CFR 1.71(a)-(c):
 - (a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.
 - (b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.
 - © In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.
3. The disclosure is objected to under 37 CFR 1.71, as being so incomprehensible as to preclude a reasonable search of the prior art by the examiner. For example, the following items are not understood: "Rain Test" has never before been used in this art.

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Applicant is required to submit an amendment which clarifies the disclosure so that the examiner may make a proper comparison of the invention with the prior art.

Applicant should be careful not to introduce any new matter into the disclosure (i.e., matter which is not supported by the disclosure as originally filed).

A shortened statutory period for reply to this action is set to expire thirty days or ONE MONTH, whichever is longer, from the mailing date of this letter.

4. The disclosure is objected to because of the following informalities: **1)**: Page 13, line 18 “was” should be -- were --; **2)**: Page 18, “Comparative Example 3” should be -- Comparative Example 2”?; **3)**: Table 1(A), page 14, for (0) time, where do the negative numbers come from?; **4)**: What is the original weight of each ball in Example(s) 1 through 5?; **5)**: How were “ the ratio” derived?

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim(s) 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 1 recite the limitation "the rain test" in line 4 and "the ratio", line 5-6. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 is rejected because of unnecessary duplication of "the ratio is in the range of 1.01:1 to 1.2"1".

Claim 8 recites the limitation "the tanning process of said leather" in line 6 of claim 8. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim(s) 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Walters (5,069,935)** as applied to the above claims, and further in view of **Osborne (1,021,424)** and **Sullivan et al. (5,820,488)**.

Walters shows all the claimed elements such as a leather cover (26) with moisture resistance properties (three methods have been described: airless-type spray, roller-coat and submerged); said leather (26) is tanned (Column 1, lines 24-29); a lining (27) made from a sheet (28) of vinyl-impregnated polyester fabric containing two or three plies; an inflatable bladder (34) made of butyl rubber or synthetic (Column 4, line 24-27).

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10. Claim(s) 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 09/184,369. Although the conflicting claims are not identical, they are not patentably distinct from each other because the essence of the invention meaning performing the rain test on the projectile remains regardless of whether the test is performed before the ball is assembled, meaning on its separable parts or after the ball is completed.

In Application # 09/184,369 (parent application) the ball is immersed for 45 minutes in water at about 70° F the preferable ratio is in the range of 1.2:1 or less, and the leather cover is immersed for 45 minutes in water at about 70° F resulting ratio 1.01:1 to 1.5:1, the preferable ratio is 1.02:1 to 1.3:1. The lining is of water resistant material made of woven or non-woven fabric-like material, and the overall immersion time is less with smaller gaps between immersion time.

Where as in the Application # 09/248,595 the ball is subjected to a cycle of rain test of 45 minute duration resulting ratio 1.01:1.2:1, the preferable ratio is 1.01:1 to 1.15:1 and the drying temperature is at 70° F for 24 hours between cycles the resulting ratio is 1.01:1 to 1.2:1. No testing was done on the leather cover by itself. The lining is of water resistant sheet-like material, and the overall immersion time is longer with larger gaps between immersion time.

It would have been obvious to take the various steps and methods from the second application and incorporate them into the parent application.

This is a provisional obviousness-type double patenting rejection.

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Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 1): Kennedy et al. Shows a synthetic leather cover including a liner and a bladder; 2): Patton shows various test results including a water absorption test over a period of 24 hours; 3): Delacoste shows a ball made of thermoplastic made similar to conventional leather balls.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is (703) 508-3550. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeanette Chapman, can be reached on (703) 308-1310. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


JEANETTE CHAPMAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

MA

August 26, 1999